

BOOK REVIEWS

WHEN PUSH COMES TO SHOVE

By Karl A. Slaikeu

San Francisco; Jossey-Bass Publishers, 1996, 301 pp.

*Reviewed by A.C. Strip, Esq.**

It is now considered "practical," "chic" and "in" to consider alternative dispute resolution. Perhaps the length of time it takes to litigate a case, perhaps the tremendous cost involved in litigation, and perhaps the unsatisfactory results and the fear of unsatisfactory results have led many to seek and find "a better way."

For a period of time, arbitration seemed a sensible solution. However, many lawyers have found arbitration to be not much different, not much faster, and often even more expensive than courtroom litigation. Parties find that they still run the risk of the unknown, have virtually the same costs when represented by counsel and often have increased costs for a panel of three arbitrators.

The movement towards mediation was slow in coming but sudden in adoption. Statistics overwhelmingly indicate that a high percentage of cases can be resolved by mediation while they are pending, and there is no reason to suspect that the same process could not work as well in earlier stages of disagreement and before substantial expense is incurred. Mediation has found its way into the federal court system, state court systems and even lower court systems such as municipal courts. The results are convincing. It is thus appropriate for Karl Slaikeu to write and have published an entire book on the art of mediation. This approximately 300-page "How To" book written by a psychologist-turned-mediator attempts to be another treatise on "Everything You Wanted to Know . . . But Were Afraid to Ask" type publication.

Interestingly, there is little that the reader will find that he or she did not already know or could not have already conjectured or, with application and some common sense, determined. Yet, the book is presented in a logical sequence including the "do"s and "don't"s of mediation, the use of the right key phrases, and even some exercises at the end of each chapter to attempt to challenge the reader. The author has clearly taken the time to organize all of his knowledge into a series of easy-to-read chapters. The author organizes his work by: (1) identifying the concept of mediation;

* A.C. Strip is an attorney with Strip, Fargo, Schulman & Hoppers Co. in Columbus, Ohio. He also serves as a mediator in the Columbus Bar Association's Settlement Week.

(2) indicating how to get the parties to the table; and (3) dealing with the elements of the mediation itself.

The author displays a certain naiveté in the use of a number of clichés that are sometimes a bit difficult for the reader to accept—particularly if the reader has been through the mediation process before. For instance, the author suggests that the mediator simply persuade the adversaries to lay down their arms and go forward as partners. However, any experienced mediator would smile at this suggestion since rarely do adversaries suddenly become enthralled with one another through the valiant efforts of the mediator.

The areas covered by the book deal with the first contact between the mediator and the parties, the conduct of the opening meeting, various caucuses held by the mediator separately with each side, post-caucus joint meetings and, in addition, invoking “subtle diplomacy” through the final closing and success.

The reader will generally nod in agreement through each step suggested by author. The experienced mediator will remember using some of the techniques described in the book and, for the most part, will have already followed almost every suggestion of the author. Nevertheless, because the author has organized the various techniques already known to the reader in a sensible fashion, the experienced mediator will still find the materials useful. The book, therefore, can serve as a reinforcement to the experienced mediator that he has been performing his work in an acceptable manner, or the book may be used by the novice as a working text.

If there is a fault in the author’s writing, it is perhaps the oversimplification of the problem and a general feeling that the mediator is either the “Goodie Two Shoes” or the hero who has just emerged from the telephone booth in tights and a cape with a big “M” (for “mediator”) emblazoned on the costume. Mediators, however, rarely come with a halo or the skills of a secretary of state.

The author strives to cover all the nitty-gritty aspects of mediation, including the arrangement for locations, seating, etc. Unfortunately, the oversimplification often is so basic that one wonders who the author expected his reading public to be. For example, suggestions that the mediator will need a conference room with sufficient seating for all the parties is hardly a revelation. The suggestion that the mediator should play host to the parties much as if he were “having people over for dinner” conjures up images of the process that might well bring a giggle to the experienced mediator reading this book. Other such space-taking suggestions are: (1) make sure that you find a room where the door closes firmly; (2) make sure there is not a big gap under the door; and (3) make sure you cannot hear voices through the air conditioning duct. Such suggestions seem more to be filler material than useful material. The author

even goes so far as to suggest that the mediator make available soft drinks and cookies. This reviewer, as an experienced mediator, questions whether such an atmosphere will lead to an appropriate mediation environment.

Yet, several of the author's suggestions are very well taken. There are several suggested opening statements that would serve a mediator well. Additionally, the author reminds the reader that the mediator is more a facilitator and less a judge. There is a further reminder that mediation is a process of facilitating agreements rather than a time for cross-examination or coercion by the mediator.

The author also raises a number of very valid items for discussion. He reminds the reader that the mediator is an "agent of problem-solving and assists in negotiation."¹ He suggests that the mediator be "active and assertive throughout the process."² He advises the reader that the mediator has certain limits. Finally, he reminds the reader that the mediation process is a series of steps and phases.

As in almost every work of this type, the author cannot resist designing certain charts with lines, arrows and grids. This is both distracting and of no help to the reader. The author also ends each chapter with certain exercises. These exercises range from impractical to just plain silly. In addition, the author makes an attempt at preparing an agreement to mediate; but unfortunately, the proposed three paragraph contract omits a number of items that would typically be included by an attorney-mediator.

On the bright side, the book is easy reading and set up in such a way that the reader can skip over certain chapters that he does not deem useful for his own work. There is something for everyone in this book, and reading it will cause one to see himself in the pages and recall a prior experience of either success or failure when dealing with some very difficult people and very difficult issues. This book is probably not a desk reference that an experienced mediator would want to keep handy. Rather, the book confirms for the experienced mediator that what he has been doing all along is basically correct and provides the mediator with a few suggestions on how to be more effective.

¹ KARL SLAIKEU, *WHEN PUSH COMES TO SHOVE* 46 (1996).

² *Id.* at 47.

